

1 2	FIRST REGULAR SESSION	
3 4	ONE HUNDRED AND ELEVENTH LEGISLATURE	_
5 6	Legislative Document No. 1115	-
7 8 9 10	 H.P. 867 House of Representatives, March 8, 1983 Submitted by the Department of Human Services pursuant to Joint Rule 24. On Motion of Representative Hobbins of Saco referred to the Committee on Judiciary. Sent up for concurrence and ordered printed. 	
11	EDWIN H. PERT, Clerk Presented by Representative Handy of Lewiston. Cosponsors: Representative Soule of Westport, Representative Diamond of Bangor and Representative Murray of Bangor.	
12 13	STATE OF MAINE	
14 15 16	IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-THREE	
17 18	AN ACT to Amend the Probate Code.	
19 20	Be it enacted by the People of the State of Maine as follows:	
21 22	<pre>Sec. 1. 18-A MRSA §5-303, sub-§(b), as enacted by PL 1979, c. 540, §1, is amended to read:</pre>	
23 24 25 26 27 28 29 30 31 32 33 34 35	(b) Upon the filing of a petition, the court shall set a date for hearing on the issues of inca- pacity and unless the allegedly incapacitated person has counsel of his own choice, it may appoint an appropriate official or attorney to represent him in the proceeding, who shall have the powers and duties of a guardian ad litem. The person alleged to be incapacitated shall be examined by a physician or by <u>a licensed psychologist</u> acceptable to the court who shall submit his report in writing to the court. The court may appoint a visitor who shall interview the allegedly incapacitated person and the person who is seeking appointment as guardian, and visit the	

1 present place of abode of the person alleged to be 2 incapacitated and the place it is proposed that he 3 will be detained or reside if the requested appointment is made, and submit his report in writing to the 4 5 court. The person alleged to be incapacitated is entitled to be present at the hearing in person, and 6 7 to see and hear all evidence bearing upon his condi-8 tion. He is entitled to be represented by counsel, 9 present evidence, to cross-examine witnesses, to 10 including the physician and the visitor. The issue 11 may be determined at a closed hearing if the person 12 to be incapacitated or his alleged counsel so 13 requests.

14Sec. 2.18-A MRSA §5-407, sub-§(b), as enacted15by PL 1979, c. 540, §1, is amended to read:

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16 (b) Upon receipt of a petition for appointment 17 of a conservator or other protective order for 18 reasons other than minority, the court shall set a 19 date for hearing. Unless the person to be protected 20 has counsel of his own choice, the court may appoint 21 a lawyer to represent him who then has the powers and 22 duties of a quardian ad litem. If the alleged dis-23 ability is mental illness, mental deficiency, physi-24 cal illness or disability, advanced age, chronic use 25 or chronic intoxication, the court may of drugs, direct that the person to be protected be examined by 26 a physician acceptable to the court, preferably 27 а 28 physician who is not connected with any institution 29 in which the person is a patient or is detained. Ιf alleged disability is mental illness or mental 30 the 31 deficiency, the court may direct that the person to be protected be examined by a physician or by a li-32 censed psychologist acceptable to the court; prefer-33 34 ably the physician or psychologist shall not be con-35 nected with any institution in which the person is a 36 patient or is detained. The court may send a visitor 37 to interview the person to be protected. The visitor 38 may be a quardian ad litem or an officer or employee 39 of the court.

- 40 Sec. 3. 18-A MRSA §5-613, as enacted by PL 1979, 41 c. 540, §1, is amended to read:
- 42 §5-613. Incapacitated persons; guardian ad litem 43 <u>costs</u>

Whenever a guardian ad litem is appointed under 1 the provisions of this Code, for an allegedly inca-pacitated person in need of protective services for 2 3 4 whom appointment of the public guardian or conservator is sought under this Part, the cost of the 5 6 quardian litem shall be paid by the Bureau of ad 7 Mental Retardation in those cases involving persons who are mentally retarded and by the Department of 8 9 Human Services in all other cases.

STATEMENT OF FACT

11 Prior to the enactment of the Probate Code, the 12 statutes governing the appointment of a public 13 guardian for an incapacitated adult authorized a licensed psychologist as well as a physician to file a 14 certification in the Probate Court with regard to the 15 16 issue of impairment or incapacity. The failure to 17 include in the Probate Code a like provision which 18 allows a licensed psychologist to examine and report 19 to the court concerning incapacity has a potentially 20 detrimental impact on those individuals whose inter-21 ests these statutes were specifically designed to 22 protect.

23 In many areas of the State, the services of а 24 psychiatrist are not readily available. For the most part, physicians other than psychiatrists have no 25 formal training in making mental status assessments. 26 27 Conversely, that is exactly the area of knowledge in 28 which psychologists have training and expertise. 29 Such expertise is of the greatest assistance to the 30 court in making a determination that an individual is 31 or is not incapacitated.

32 The bill allows the court to utilize the exper-33 tise of this profession in a most appropriate 34 The expertise of psychologists to assist setting. 35 courts in making determinations regarding mental status has been recognized in other areas of the law, 36 37 Title 15, section 101, assessing criminal as in 38 responsibility and competency to stand trial, and Title 22, section 4007, assessing jeopardy in child 39 40 abuse and neglect proceedings.

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